Law Teaching and Problem Analysis

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WHEN quarrels over the case-method of law teaching had rumbled and subsided, legal pedagogy settled into a period of relatively self-complacent inertia. After 1920, however, a new tide of questioning began to arise. The American Bar Association had some hot arguments in its section on legal education, and in 1924 the Association of American Law Schools formed a committee on co-operation with the Bench and Bar. The law schools of Yale and Columbia universities led in a radical re-examination and reorganization of curricula, a process now going on in a dozen or more leading law schools.[1] Considerable thought about methods

[1] Report of Committee on Co-operation with Bench and Bar, printed in Program of 1931 Meeting of Association of American Law Schools, pp. 20–28. Northeastern University Law School, in Boston, is now at the peak of an exhaustive inquiry into curriculum, examinations and teaching methods.

of examination and grading was provoked by the research of Professor Ben D. Wood, Columbia University psychologist.[2] The Association of American Law Schools organized a round table on teaching method, held it for two years, and then turned the entire 1931 meeting into a pedagogical symposium. The purposes behind all of this activity were somewhat varied, but one of them was that lawyers were not as effective as they might be in putting to practical use the materials obtained in law school. Several prominent lawyers bemoaned the "poor unfortunate thrown on his own resources, 'loaded with law,' but helpless in its use and application."[3]

With considerable timidity, we herewith present some purely personal opinions and observations. Accurate shooting is unlikely without a target, so we must attempt a premise. The primary job of most law teachers is to teach law students to do that which a practicing lawyer has to do,—including not only what is done but also what ought to be done for a maximum of effectiveness. The main job of a lawyer is to handle a set of facts. "Every question of law arises out of a fact situation, and if there be no state of facts there can be no question of law."[4] "The field of the law is the field of a practical science and a practical art. As lawyers we endeavor to forecast potential legal consequences of particular causal facts and to influence the actual trend of concrete legal consequences."[5] This prediction tells the lawyer whether to stand trial or compromise, or sets the form and content of an agreement or document being drawn. In shaping his prediction, the lawyer must use many mental tools, and herein lies our goal or target. What tools ought to be possessed by the lawyer, and hence ought to be put in the grasp of the law student?

Dean Pound of Harvard Law School has suggested an interesting list.[6] The basic group is "legal precepts," composed of broad standards and conceptions, less broad principles, and definite rules. Analytical and historical jurists made the precept element their main object, as have judges, text writers, and compilers of digests. Researches and restatements are still busy with it, and it has had some good teaching under the case method. Lawyers and students know a substantial number of legal precepts, or know where to find them, and the least of their errors lie here. The chief weakness in this basic set of mental tools is in the matter of corollary precepts in related fields, such as sociology, psychology and business. Judges, lawyers, students and teachers often talk about these matters very glibly, with more of invention than knowledge. Legal precepts may tell what securities a trustee or executor can deal in, and how; but they do not answer the equally important questions as to what is *wise* and what is the best time or place for action. It is probable that there is not time to present these corollary precepts to law students, but it is possible to create a consciousness of their existence, of their literature, of their indices, and of where they may be found. This is a

[2] See 24 Col. L. Rev. 224; 25 Col. L. Rev. 316; 27 Col. L. Rev. 784.

[3] Mr. Alexander B. Geary, in appendix to 18 Delaware County Reports (Penn.).

[4] U. S. v. Rodenbough, 14 F. (2d) 989, 990.

[5] Professor J. W. Bingham, "What Is the Law?", 11 Mich. L. Rev. 1, at p. 15.

[6] Pound, "The Theory of Judicial Decision," 36 Harv. L. Rev. 641, at pp. 645 *et seq.*

very serious problem, going to the very heart of both practice and intelligent theory. The business side of it was discussed in a valuable paper by Professor Nathan Isaacs before the round table on Commercial Law at the 1931 meeting of the Association of American Law Schools.[7]

Dean Pound's second set of mental tools consists of "received ideals as to the end of law and what legal precepts should be and should achieve in view thereof."[8] These analytico-critical instruments are important for a clear understanding of the legal precepts that are, and for formation of those of the future. They bring to life decisions or statutes which seem to lie dead and dessicated on the printed page, and have a close relation to the corollary precepts mentioned above. They are woven into most law teaching, with varying degrees of consciousness of their scientific shapes.

The third set consists of "a traditional art of decision and technique of using and developing legal materials." Such tools were generally overlooked by analytical and historical jurists. They are absolutely essential to the lawyer in putting to use his first two groups of mental equipment.

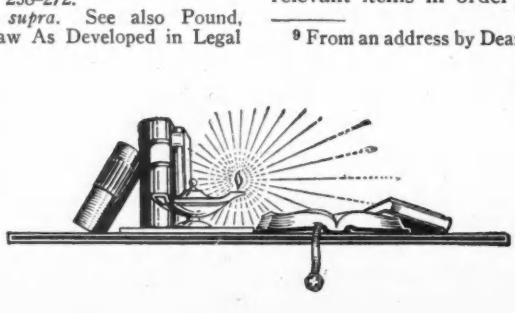
An important member of this last group may be called "Problem Analysis," and it is the main object of this paper. "Clients do not come to lawyers' offices for lectures on abstract legal rules. They go for help and advice on their problems. The lawyer must hear their stories, separate the relevant and the irrelevant in what they tell him, decide what the legal questions are, and give the answer. His information of rules supplies only the latter—and it is utterly useless until the facts are analyzed and the legal issues ascertained."[9] It is this analytical capacity, this tool for the application of tools, that the case-method purports to teach and the prevalent essay-type of examination purports to seek out. And yet it seems to the writer that the most common sins and errors lie just here.

A student, faced with two possible defences to an equitable bill, will discuss but one. He will discuss an obvious issue of consideration for a promise, and omit an issue of impossibility, illegality, or unperformed conditions. Even worse, he will omit relevant items in order to discuss ir-

[7] Published in 6 Cincinnati L. Rev. 1, January 1932. See also the latter half of an address by President Hutchins of the University of Chicago delivered before the Kentucky State Bar Association, published in 1929 Proceedings Kentucky State Bar Association, pp. 258–272.

[8] See note 8 *supra*. See also Pound, "The End of Law As Developed in Legal Rules and Doctrines," 27 Harv. L. Rev. 195; Pound, "The End of Law As Developed in Juristic Thought," 27 Harv. L. Rev. 605, 30 Harv. L. Rev. 201.

[9] From an address by Dean H. F. Goodrich of the University of Pennsylvania Law School delivered before the Conference of Bar Examiners on Sept. 16, 1931, and published in 7 Amer. L. Sch. Rev. 307–315.



relevant items. Frequently the student really knows the precepts which he has left out. We have noted often the phenomenon of a poor examination written by a student who has worked hard and can discuss well each issue raised by the examination when specifically asked.

When the student becomes a young lawyer his worst sins will still be those of omission. His most disheartening moment will be his defeat by a nonsuit or directed verdict, due to the incompleteness of his own analysis. Sometimes his defects are not fatal because of suggestions from a kindly judge, or through liberal use of leave to amend, events not conducive to fame for the lawyer or his school. In 1927 the late Professor Hepburn reported that the Cincinnati courts, among others, "are complaining now about the way that law graduates are interfering with the administration of justice in the way they handle their cases in the trial courts." [10] The writer joined in a criminal trial last summer in which an experienced lawyer had left out whole chunks of vital issues and evidence, with almost fatal results. Parallels are countless.

Judges, also, are afflicted with sins of omission and incomplete analysis. All of us have noted such matters in judicial opinions,[11] and have criticized them more or less frequently. Judges are but glorified lawyers and students, partaking of their faults as well as their virtues.

The chief difficulty is lack of method. "Most capable minds fail to achieve the maximum results, for which they are fitted, because of lack of system." [12] In attempting to drain dry the elements and issues of a fact problem, and to put to use all of the appropriate mental tools of lawyer and student, success is difficult without an orderly scheme of approach. Thought and analysis are not matters for "hunches" and brilliant intuitions; they are matters of scientific organization.

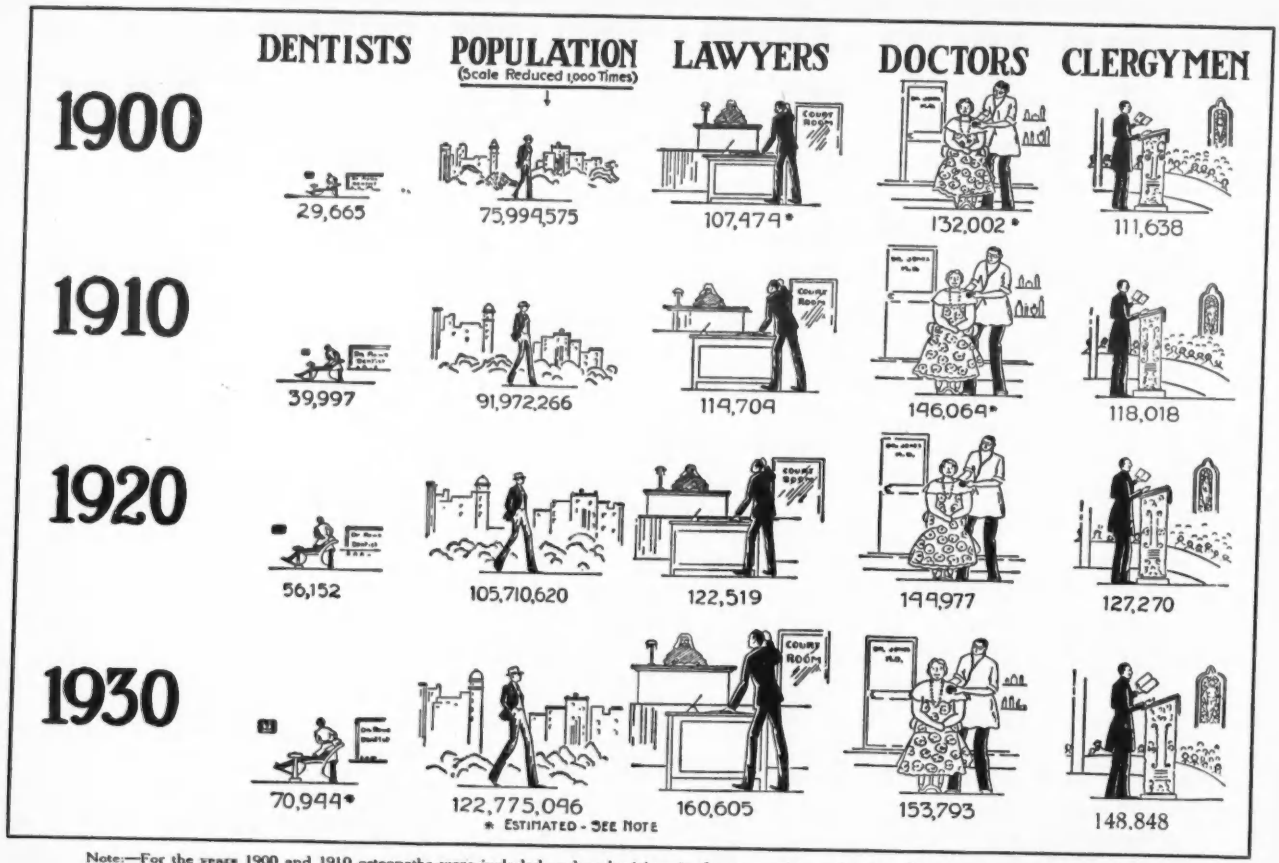
In the first place, the answer to a problem must come last and not first. In some sets of examination questions, there has been noted at the top a direction to set down the answer first, then give reasons in full. Speaking of examinations, in his monograph on "How to Study Law," Professor Leavitt says "decide what your answer is to be" as the first step and then "stick to your answer." It may be well enough to leave a space at the top for an answer or decision, filling it in when the analysis is finished, but to start analysis with an answer is dangerous and psychologically unsound. We all admire the so-called dynamic mind, which can give careful consideration to all items so rapidly as to appear casual, but this type of mind is classed by psychologists as very rare, one of the marks of genius. Lyman Abbott once said that he took hours to think out a problem which Theodore Roosevelt solved in a few minutes, but

(*Continued on page twenty*)

[10] From an address delivered before the Association of American Law Schools, and published in 6 Amer. L. Sch. Rev. 245.

[11] E. g., compare the careful analysis of an express charitable trust in Richardson v. Essex Institute (1911) 208 Mass. 311, 94 N. E. 262, with Bullock v. Long, Commissioner (1927) 260 Mass. 129, 156 N. E. 743. In the latter case failure to analyze each element caused the court to mix the trustee and the beneficiary and hold the trust void because the trustee was not a charitable institution, whereas charitableness is tested as of the beneficiary and not as of the trustee.

[12] Professor J. H. Wigmore, in his introduction to Professor Leavitt's monograph "How to Study Law."



Note:—For the years 1900 and 1910 osteopaths were included under physicians in the census figures but have been estimated and deducted here.
In 1900 obstetrists, notaries and justices of the peace were included

Among the New Decisions

Abatement — *liability of corporate officer.* In Union Market National Bank v. Gardiner, — Mass. —, 79 A.L.R. 1512, 177 N. E. 682, the statutory liability of an officer of a corporation under certain circumstances for its debts and contracts was held to survive his death.

Annotation: Abatement upon death, of cause of action to enforce personal liability of corporate officer, director, or trustee. 79 A.L.R. 1517.

Accounting — *bank holding property as security.* In Davis v. Ebensburg Trust Co. 304 Pa. 260, 79 A.L.R. 195, 155 Atl. 433, it was held that one who has had numerous transactions with a bank which has made charges against his account other than for checks drawn by him, and who has transferred property to it under an agreement that the proceeds shall be applied upon any indebtedness to the bank, is entitled to an accounting for all moneys received from sales of portions of the property without offering to reimburse the bank for money expended by it in acquiring and foreclosing an outstanding mortgage on the property

Annotation: Right of owner of property to maintain bill for accounting against lien holder or pledgee. 79 A.L.R. 201.

Alimony — *fraudulent conveyance.* In Sims v. Sims, 150 Okla. 138, 79 A.L.R. 414, 300 Pac. 692, it was held that when a wife whose husband has deserted her and refuses to perform the duties of maintenance has been compelled to leave his household and commence a proceeding for maintenance, she should be viewed as quasi creditor in relation to the alimony which the court has awarded to her; and, when she is compelled to become a suitor for her rights, her relation becomes adverse, that of a creditor in fact, and she is not to be balked of her dues by his fraud.

Annotation: Wife in respect of her right to maintenance or alimony as within protection of statute or rule avoiding conveyances or transfers in fraud of creditors or persons to whom maker is under legal liability. 79 A.L.R. 421.

Alimony — *Lien.* In Bashore v. Thurman, 152 Okla. 1, 79 A.L.R. 249, 3 Pac. (2d) 712, it was held that the provision in a decree of divorce for monthly payments by a husband for support of his minor child, where no definite amount is fixed, does not create a lien against his land for future unmatured instalments, and where the husband acquires an interest in land by inheritance subsequent to the divorce, it is error in a proceeding in the district court to partition the land to compute the amount which would have accrued to the child under the decree

Note:—For the years 1900 and 1910 osteopaths were included under physicians in the census figures but have been estimated and deducted here.

during its minority and decree a lien in its favor against the husband's interest in the land for such sum.

Annotation: Decree for periodical payments for support or alimony as a lien, or the subject of a declaration of lien. 79 A.L.R. 252.

Attorneys — *disbarment for crime.* In Re Minner, 133 Kan. 789, 79 A.L.R. 40, 3 Pac. (2d) 473, being found guilty of a felony under a Federal statute in a Federal court of the district of Kansas was held to subject an attorney at law, admitted to the bar of this state, to the automatic disbarment provision of Rev. Stat. § 7–110, the same as being found guilty of a felony under a state statute in a Kansas state court of record.

Annotation: Conviction in Federal court or court of another state as within contemplation of statute providing for disbarment of attorney on conviction of a felony. 79 A.L.R. 38.

Automobile accident — *injury or intervening disease.* In Loveless v. Red Top Cab Co. 158 Wash. 474, 79 A.L.R. 347, 291 Pac. 344, it was held that a personal injury inflicted by an automobile may properly be found to have been the proximate cause of death from pneumonia where there is evidence warranting a finding that a malignant tumor from which death would ultimately have resulted was caused by the accident, and that pneumonia was merely the terminal cause of death.

Annotation: Injury as proximate cause of death where disease intervenes. 79 A.L.R. 351.

Automobiles — *duty of pedestrian crossing street.* In Salsich v. Bunn. — Wis. —, 79 A.L.R. 1069, 238 N. W. 394, it was held that ordinary care requires that a pedestrian crossing a busy city street make observation before leaving the zone of safety at the sidewalk or curb as to traffic ap-

proaching from the left, and again look when at or near the center for traffic approaching from the right, unless there are attending circumstances which reasonably cause attention to be diverted.

Annotation: Duty of pedestrian crossing street or highway as regards looking for automobiles. 79 A.L.R. 1073.

Automobiles — *res ipsa loquitur as to tire blowout.* In Giddings v. Honan, 114 Conn. 473, 79 A.L.R. 1215, 159 Atl. 271, it was held that the doctrine of res ipsa loquitur is inapplicable in an action based on the reckless operation of an automobile which overturned, injuring its occupants, where, after the accident, a front tire was found to have blown out.

Annotation: Condition of tires as affecting liability for automobile accident. 79 A.L.R. 1218.

Banks — *descent as creating stockholder's liability.* In Austin v. Strong, 117 Tex. 263, 79 A.L.R. 1528, 1 S. W. (2d) 872, it was held that the relation of stockholder in a bank, with its attendant liability, cannot be forced on one against his desire, by operation of a statute of descent and distribution.

This question is annotated in 79 A.L.R. 1537.

Banks — *set-off of deposit against note.* In Ex parte Rice, 161 S. C. 77, 79 A.L.R. 123, 159 S. E. 492, it was held that the words "without offset" used in a negotiable note do not prevent the maker or indorser from setting off his deposit in an insolvent bank holding the note.

Annotation: Effect of words "without offset," "without defalcation," or the like, in negotiable paper. 79 A.L.R. 126.

Beauty shops — *regulation of.* In State v. Reeve, — Fla. —, 79 A.L.R. 1119, 139 So. 817, it was held that the city of Miami, in promoting and maintaining the general welfare, comfort, and health of its inhabitants, is authorized to adopt and enforce an ordinance regulating the profession or trade of the beauty culturist, such as the one here under consideration.

Annotation: Constitutionality, validity, construction, and effect of statute or ordinance regulating beauty shop or specialists. 79 A.L.R. 1126.

Brokers — *sale of stock of bankrupt customer.* Re Salmon Weed & Co. 79 A.L.R. 379, 53 F. (2d) 335, it was held that a broker carrying stock for a customer is not, in the absence of an agreement requiring him to do so, bound to sell it immediately after the customer has become bankrupt, as a condition of his right to allowance against the bankrupt's estate of a claim for any deficiency remaining after applying the proceeds of the stock to the customer's debts.

Annotation: Duty of broker or banker as regards pledged security on bankruptcy of customers. 79 A.L.R. 389.

Brokers — *rules of exchange.* In Cisler v. Ray, — Cal. —, 79 A.L.R. 584, 2 Pac. (2d) 987, it was held that a customer who has agreed with a stockbroker that all transactions shall be subject to the rules, regulations, and customs of the exchange or market where executed is bound by such rules, regulations, or customs, whether or not he knew of their existence.

Annotation: Regulations, rules, custom, or usage of stock or produce exchange or of stock or produce broker as affecting customers. 79 A.L.R. 592.

Chattel mortgages — *change of possession.* In New York Trust Co. v. Stevens, 79 A.L.R. 1007, 33 F. (2d) 104, it was held that the statutory re-

quirement of "immediate delivery" and "actual" change of possession as a condition of the validity, as against creditors of an unrecorded chattel mortgage, is satisfied where the trustee in a deed of trust, constituting a chattel mortgage, retained possession of the subject-matter which was then in his possession as security for a previous loan, which had been discharged, and a delivery by him to the mortgagor and a redelivery by the mortgagor back to him was not necessary.

See annotation on this question beginning on page 1018.

Conditional sales contract — *negotiability.* In Motor Contract Co. v. Van der Volgen, 162 Wash. 449, 79 A.L.R. 29, 298 Pac. 705, a provision in a conditional sales contract that as against any assignee for value it shall be construed as a negotiable instrument and as an absolute and unconditional promise to pay, and that all defenses not appearing on the face of the instrument are waived as against the vendor, was held not to bring it within the protection of the Negotiable Instruments Act where such act provides that the only instruments that are negotiable are those complying with the requirements there stated.

Annotation: Validity and effect of provision in contract that it shall be regarded as a negotiable instrument. 79 A.L.R. 33.

Confession — *corroboration of.* In State v. Lytton, 257 N. Y. 310, 79 A.L.R. 503, 178 N. E. 290, it was held that on a trial for homicide perpetrated in the commission of another and independent felony, corroboration of a confession as to the fact of the homicide satisfies a statute providing that a confession of a defendant is not sufficient to warrant his conviction without additional proof that the crime charged has been committed, and is, therefore, sufficient to support a conviction of murder in the first degree without corroborative evidence, apart from the confession, of the independent felony.

Annotation: Necessity that confession in prosecution for homicide during perpetration of another felony be corroborated by other evidence of the commission of the other felony. 79 A.L.R. 508.

Constitutional law — *prohibiting tobacco advertising.* In Packer Corp. v. State of Utah, 285 U. S. —, 79 A.L.R. 546, 76 L. ed. (Adv. 351), 52 S. Ct. 273, it was held that a state statute prohibiting tobacco advertising on billboards, street car signs, and placards, while permitting it in newspapers and magazines, does not make an arbitrary classification in violation of the equal protection clause of the 14th Amendment, particularly where one purpose of the classification was to comply with the commerce clause of the Federal Constitution as interpreted and applied by the highest court of the state.

Annotation: Constitutional power to regulate outdoor and street car advertising. 79 A.L.R. 551.

Constitutional law — *service on unincorporated association.* In Jardine v. Superior Court for Los Angeles County, — Cal. —, 79 A.L.R. 291, 2 Pac. (2d) 756, a statute which provides that jurisdiction to render judgment against an association which will bind the joint property of the associates may be acquired by service on one or more of its members was held consistent with due process.

Annotation: Constitutionality, construction, and applicability of statutes relating to service of process on unincorporated association. 79 A.L.R. 305.

Constitutional law — *trapping animals.* In Commonwealth v. Higgins,

— Mass. —, 79 A.L.R. 1304, 178 N. E. 536, it was held that a statute penalizing the taking of fur-bearing animals by any trap or device likely to cause continued suffering to an animal caught therein, and not designed to kill such animal at once or to take it alive unhurt, but which permits such traps to be set for protection against vermin not more than 50 yards from any building or cultivated plot of land to the use of which the presence of vermin may be detrimental, does not, even though it renders the trapping of foxes by poultry owners impracticable, violate the constitutional right of acquiring, possessing, and protecting property.

Annotation: Constitutionality of statute to prevent cruelty in trapping animals. 79 A.L.R. 1308.

Contracts — *liquidated damage provision.* In Quaile & Co. v. Kelly Milling Co. 184 Ark. 717, 79 A.L.R. 183, 43 S. W. (2d) 369, a provision in a contract for the manufacture and sale of a certain brand of flour, terminable by the seller in event of the buyer's failure to furnish shipping instructions, for the payment in event of termination, as liquidated damages on flour remaining unshipped, of the sum of one third of 1 cent per day per barrel from the date of sale to the date of the termination as the expense of carrying, plus 20 cents per barrel as the cost of selling, and plus or minus the difference between the market value on the date of sale and on the date of termination at the mill of the quantity of cash wheat necessary to manufacture the flour, was held valid and enforceable where it appears that taking orders in advance of manufacture is necessary to stabilize the business, and by reason of fluctuation in the price of wheat it is desirable to purchase sufficient to fill an order for flour at the time the order is taken.

Annotation: Stipulation as to damages in case of breach of contract for purchase of goods to be manufactured by other party, as penalty or liquidated damages, 79 A.L.R. 188.

Evidence — *presumption from low bridge over railroad track.* In Reading Co. v. Geary, 79 A.L.R. 226, 47 F. (2d) 142, it was held that the inference of negligence on the part of a railroad company in maintaining an overhead bridge across its tracks at a height which makes possible a contact with it by brakemen or firemen may be overcome by proof of proper safeguards and proper warnings to its employees.

Annotation: Duty of railroad toward employees in respect of telltales or other warning of low bridge or other structure over track. 79 A.L.R. 236.

Evidence — *testator's declarations.* In Re Estate of Wayne, 134 Or. 464, 79 A.L.R. 1427, 291 Pac. 356, it was held that evidence of declarations of a testator made before or after the making and execution of his will is not admissible as substantive proof of undue influence; but such statements are admissible for the purpose of shedding light upon the condition of mind of the testator as showing his susceptibility to undue influence.

Annotation: Admissibility of declarations of testator on issue of undue influence. 79 A.L.R. 1447.

Evidence — *testator's declarations.* In Compton v. Dannenbauer, — Tex. —, 79 A.L.R. 1488, 35 S. W. (2d) 682, statements made by a testator subsequently to the execution of a will offered for probate, to the effect that he had never made any later will, were held admissible in evidence on the issue whether the will offered had been revoked by the making of a subsequent will alleged to have been lost.

Annotation: Admissibility of declarations by testator on issue of revocation of will. 79 A.L.R. 1493.

False imprisonment — *opportunity for bail.* In Harbison v. Chicago, R. I. & Pac. Ry. Co. 327 Mo. 440, 79 A.L.R. 1, 37 S. W. (2d) 609, it was held that an officer in charge of a person under arrest, who wrongfully denies him an opportunity to give bond, is liable for false imprisonment in respect of subsequent detention.

The annotation in 79 A.L.R. 13 discusses delay in taking before magistrate or denial of opportunity to give bail as supporting action for false imprisonment.

Fraudulent conveyance — *grantee's rights.* In People's Savings & Dime Bk. v. Scott, 303 Pa. 294, 79 A.L.R. 129, 154 Atl. 489, it was held that one who, without any fraudulent intent, received a conveyance of property which is set aside as in fraud of creditors of the grantor, is, both un-

der the Uniform Fraudulent Conveyance Act and under the general rule in equity, entitled to protection by way of lien on the property to the extent of the consideration given.

Annotation: Right of grantee, mortgagee, or transferee in instrument fraudulent as to creditors to protection to extent of consideration paid by him. 79 A.L.R. 132.

Gaming — *sale of racing animals.* In State v. Falls Cities Amusement Co. 124 Ohio St. 518, 79 A.L.R. 568, 179 N. E. 405, the operation of the scheme known in this record as "Adams' Animal Auction for Horses and Dogs" was held to violate the penal provisions of §§ 13062 and 13063, General Code, and the wilful, habitual, and persistent operation of such scheme by a corporation incorporated under the laws of another state and authorized to do business in the state of Ohio under favor of § 178 and succeeding sections, General Code, requires the ouster of such corporation from its franchise to do business in the state.

Annotation: Legality of scheme purporting a purchase and sale of horses or dogs in connection with racing exhibitions. 79 A.L.R. 576.

Indictment — *mistake in name of defendant.* In Culpepper v. State, 173 Ga. 799, 79 A.L.R. 217, 161 S. E. 623, it was held that where, by mistake in drawing an accusation, a named person is charged as the perpetrator of an offense instead of the person who in fact committed the same, such error is fatal and incurable; and the accusation is null and void as one upon which the real perpetrator of the crime alleged can be arraigned. This is so notwithstanding the clear inference from the record is that the surname of the prosecutor was inadvertently inserted in the accusation as the perpetrator of the offense, instead of one Culpepper, who was in fact the person who committed the crime, and notwithstanding the further fact that, on the back of the accusation, was the statement of the case as that of "The State v. Ed C. Culpepper."

Annotation: Substitution by mistake of name of person other than defendant for defendant's name in indictment, information, or other criminal accusation. 79 A.L.R. 219.

Intoxicating liquors — *casual employee.* In Kachnic v. United States, 79 A.L.R. 1366, 53 F. (2d) 312, it was held that the amendment of January 15, 1931 (U. S. C. title 27, § 91), to the Jones Act, providing a lighter penalty for persons whose connection with violations of the National Prohibition Act is that of "casual employees" than for other offenders, does not make it necessary to allege in the indictment whether or not the defendant took part as a casual employee only.

Annotation: Construction, applicability, and effect of provisions of Prohibition Law regarding discrimination between casual or slight violations and habitual sales or attempts to commercialize violations of law. 79 A.L.R. 1366.

Intoxicating liquors — *forfeiture.* In Strong v. United States, 79 A.L.R. 150, 46 F. (2d) 257, it was held that a court's jurisdiction to decree the forfeiture of contraband liquor under the National Prohibition Act is not affected by the fact that the seizure of the liquor was not lawfully made, the only requisite being that the liquor must be in the actual or constructive possession of the court at the time the libel is filed.

Annotation: Lawfulness of seizure as condition of jurisdiction of forfeiture proceedings under National Prohibition Act. 79 A.L.R. 156.

Jury — *professional relation as disqualification.* In Klinck v. State of

Indiana, — Ind. —, 79 A.L.R. 272, 179 N. E. 549, it was held that a juror is disqualified on the ground of bias implied from the relation of attorney and client between an attorney for the defendant or for the state and himself, only where the relation exists at the time of the trial.

Annotation: Professional or business relations between proposed juror and attorney as ground of challenge for cause. 79 A.L.R. 276.

Jury — *right to trial by court.* In People v. Scornavache, 347 Ill. 403, 79 A.L.R. 553, 179 N. E. 909, it was held that the constitutional guaranty of the right of jury trial in criminal cases does not make it optional with accused whether to be tried by a jury or by the court; but in the absence of constitutional or statutory inhibition the court has the power, and upon objection by the people it is its duty, to submit the issues of fact to a jury notwithstanding a waiver of jury trial by the accused.

Annotation: Right of defendant in criminal case to insist, over objection of prosecution or court, upon trial by court without a jury. 79 A.L.R. 553.

Landlord and tenant — *assignment as subletting.* In Cities Service Oil Co. v. Taylor, 242 Ky. 157, 79 A.L.R. 1374, 45 S. W. (2d) 1039, it was held that a provision in a lease of a filling station for a term of ten years that the lessee shall have the right to sublease with the consent of the lessor does not require the lessor's consent to an assignment of the lease,

although the rental is based on the quantity of gas sold at the station.

Annotation: Assignment of lease as breach of covenant against subletting. 79 A.L.R. 1379.

License — *marathon dance.* In State v. City of Milwaukee, — Wis. —, 79 A.L.R. 281, 240 N. W. 847, it was held that no abuse of discretion is involved in revoking a license under which it is sought to conduct a marathon dance.

Annotation: Grounds for and justification of revocation of license or permit for an exhibit or amusement enterprise. 79 A.L.R. 286.

Marriage — *resumption of cohabitation after divorce.* In Arnold v. Arnold, 255 Mich. 248, 79 A.L.R. 211, 238 N. W. 209, resumption of cohabitation by a divorced husband and wife was held to afford no basis for inference of a common-law marriage, where one of them is shown, in view of the laws of the church to which he belonged, not to have considered the divorce as a severance of the marriage relation.

Annotation: Common-law marriage as predicable of resumption of cohabitation between parties to a divorce. 79 A.L.R. 213.

Notary public — *as public officer.* In State of North Carolina v. Watson, 201 N. C. 661, 79 A.L.R. 441, 161 S. E. 215, it was held that the position of notary public, though held for no definite term but at the will of the governor of the state, and though the incumbent may not be compelled to exercise his functions, is an office held under the state within a constitutional provision that no officeholder shall hold or exercise any other office or place of trust or profit under the authority of the state, but that nothing therein shall extend to commissioners for special purposes.

Annotation: Notary public as an officer. 79 A.L.R. 449.

Novation — *transfer of assets of bank.* In City National Bank of Huron v. Fuller C. C. A. 79 A.L.R. 71, 52 Fed. (2d) 870, it was held that the holder of a certificate of deposit in a bank which had transferred its assets to another bank assuming its obligation did not by presenting his claim in insolvency against the successor bank and receiving the payment of two small dividends release his claim against the transferrer although he made no claim against the latter for more than two years.

An annotation on this subject discusses this question beginning on page 82 of 79 A.L.R.

Nuisances — *dogs as.* In Krebs v. Hermann, — Colo. —, 79 A.L.R. 1054, 6 Pac. (2d) 907, it was held that the keeping of from forty to eighty dogs from whose kennels offensive odors arise, and whose barking in the nighttime when aroused by the passing of automobiles on a much traveled highway breaks the rest of persons living on adjoining premises, is a private nuisance.

Annotation: Dogs as nuisance. 79 A.L.R. 1060.

Oil and gas lease — *covenant as running with land.* In Prairie Oil & Gas Co. v. Jordan, 151 Okla. 147, 79 A.L.R. 492, 3 Pac. (2d) 170, it was held that a covenant of a general warranty contained in an oil and gas lease does not run with the land. A cause of action for breach of such covenant does not inure to the benefit of a remote transferee of the original covenantor.

Annotation: Covenants in oil and gas lease as running with the land. 79 A.L.R. 496.

Public contracts — ***bids on unit basis.*** In Devir v. Hastings, — Mass.

—, 79 A.L.R. 222, 178 N. E. 617, it was held that bidders for a street surfacing job are not deprived of a common basis for bidding, to the destruction of competitive bidding, by a requirement that all bids be submitted on a per yard basis and the reservation of the right by the city to award the contract for any one or more of the four streets under consideration to any bidder, since all bidders had knowledge of the number of square yards upon each of the four streets and therefore knew not only the minimum quantity which would be awarded to a successful bidder, but also the maximum amount for which an award might be made, and could figure bids on each street separately and also on any combination of streets named.

Annotation: Right in submitting proposal for bids on public work to require bid on unit basis, with reservation to public authorities of right to determine amount or extent of work. 79 A.L.R. 225.

Receivers — *power to make repairs.* In American Savings Bank Co. v. Union Trust Co. 124 Ohio St. 126, 79 A.L.R. 160, 177 N. E. 199, it was held that a receiver appointed for an apartment house, with authority "to make such repairs as are necessary for the proper maintenance of the property in his charge," is not justified in making any or all repairs at his discretion without advance application to the court. He may make immediate minor repairs upon rented property, without such application, if the existing or probable income therefrom justifies it, or if such minor expenditures are necessary to conserve the property; but, if the expenditures for the proposed repairs are unusual or substantial, the receiver should apply to the court for authority to make them, and notice should be given to interested parties, thus giving them an opportunity to be heard.

Annotation: Duty of receiver to apply to court before making outlays for improvement, repairs, or upkeep of property. 79 A.L.R. 164.

Res ipsa loquitur — *effect of pleading specific negligence.* In Angerman Co. Inc. v. Edgemon, 76 Utah, 394, 79 A.L.R. 35, 290 Pac. 169, a plaintiff was held not precluded from relying upon the doctrine res ipsa loquitur to aid his case by pleading in addition to general negligence specific acts of negligence.

Annotation: Pleading particular cause of injury as waiver of right to rely on res ipsa loquitur. 79 A.L.R. 48.

Safety zone ordinance — *constitutionality.* In City of Cleveland v. Gustafson, 124 Ohio St. 607, 79 A.L.R. 1325, 180 N. E. 59, section 2427 of the ordinance of the city of Cleveland, Ohio, authorizing the director of public safety to establish safety zones along any street car line at any regularly designated street car stop, and requiring all vehicles, excepting street cars, to pass only to the right of such designated safety zones, unless a police officer directs a vehicle to pass to the left, was held not in conflict with the Constitution or statutes of the state of Ohio.

Annotation: Validity of safety zone ordinance. 79 A.L.R. 1328.

Taxation — *Municipal advertising.* In Loeb v. City of Jacksonville, — Fla. —, 79 A.L.R. 459, 134 So. 205, an ordinance of the city of Jacksonville levying an ad valorem tax upon the property in said city to create a fund to be expended for the purpose of municipal advertising was held ultra vires and void, said city not having been vested by the legislature with the power to levy a tax for such purpose. Whether the legislature could constitutionally vest a municipality of this

state with such power, it is not necessary for the court to decide in this case.

Annotation: Power of municipality to make expenditures for advertising or other forms of publicity. 79 A.L.R. 466.

Tax lien — *compensation in condemnation proceedings.* In Johnson v. Revere Building, Inc. — Mass. —, 79 A.L.R. 112, 177 N. E. 577, the statutory lien of a tax upon real estate was held not to extend to compensation awarded to a mortgagee thereof in condemnation proceedings.

Annotation: Right in respect of taxes where property is taken in eminent domain. 79 A.L.R. 116.

Taxes — *remission.* In Jones v. Williams, — Tex. —, 79 A.L.R. 983, 45 S. W. (2d) 130, it was held that an economic depression is not a "great public calamity" within the meaning of a constitutional grant of power to the legislature to release the inhabitants of, or property in, any county, city, or town from the payment of taxes in case of great public calamity in any such county, city, or town.

Annotation: Constitutionality and construction of statute providing for or authorizing waiver or reduction of penalty or interest in respect of taxes in default. 79 A.L.R. 999.

Third degree — *examination of prisoners.* In Bonahoon v. State, — Ind. —, 79 A.L.R. 453, 178 N. E. 570, it was held that the reasonable examination of prisoners charged with or suspected of crime should be allowed in the interest of the public welfare and safety, but should be kept within proper bounds, and cruel and brutal methods should never be tolerated.

Annotation: Rights and responsibilities, civil or criminal, of police officers in respect of examination of persons under arrest ("third degree"). 79 A.L.R. 457.

Trial — *separation of sick juror.* In Spence v. State, 180 Ark. 1123, 79 A.L.R. 813, 24 S. W. (2d) 331, it was held that separation of a sick juror, in charge of a deputy sheriff, for medical attention, by direction of the court pending the trial of a homicide case, was a proper exercise of the court's discretion, and not a violation of a previous order requiring the jury to be kept together, and did not impose upon the state the burden of making an affirmative showing that the juror was not exposed to any improper influence during the separation.

Annotation: Separation of jury in criminal case. 79 A.L.R. 813.

Wills — *ademption of option to purchase.* In Re Carrington [1932] 79 A.L.R. 259, 1 Ch. 1, it was held that bequests of shares of stock are adeemed where an option given by testator to purchase them within a month after his decease is exercised.

Annotation: Option given by testator before or after execution of will as ademption of specific legacy or devise. 79 A.L.R. 268.

Wills — *law governing construction.* In Higginbotham v. Manchester, 113 Conn. 62, 79 A.L.R. 85, 154 Atl. 242, it was held that the law of the state of testator's domicil, rather than that of the state where the property is situated, governs the determination of the question whether he is presumed to have intended that a mortgage given by himself on property devised should be satisfied out of the general personal assets.

Annotation: Conflict of laws as to construction and effect of will devising real property. 79 A.L.R. 91.

Witnesses — *waiver of competency.* In Billingsley v. Gulick, 256 Mich. 606, 79 A.L.R. 166, 240 N. W. 46, it was held that a party representing a deceased person, who fails to object to the competency of the opposing party to testify to matters equally within the knowledge of the deceased, and elects to cross-examine, thereby waives the right to object to the competency of such opposing party as a witness on a second trial.

Annotation: Waiver of objection to testimony or evidence at one trial as affecting right to make objection on subsequent trial of same case. 79 A.L.R. 173.

Witnesses — *will impeached by subscribing witness.* In Re Estate of Warren, — Or. —, 79 A.L.R. 389, 4 Pac. (2d) 635, it was held that the testimony of a subscribing witness who seeks to impeach the due execution of a will should be received with caution and viewed with suspicion.

Annotation: Admissibility and credibility of testimony of subscribing witness tending to impeach execution of will or testamentary capacity of testator. 79 A.L.R. 635.

Writ and process — *legislator as exempt from.* In People of the State v. Hofstadter, 258 N. Y. 425, 79 A.L.R. 1208, 180 N. E. 106, it was held that service upon a member of the legislature of a subpœna of a legislative investigating committee, or the execution by the sheriff of a warrant to apprehend him and bring him before the committee upon his failure to appear in obedience to the subpœna, is not a breach of his statutory privilege from arrest in a "civil action or proceeding."

Annotation: Service of a subpœna as an arrest within constitutional or statutory immunity of members of legislature or others from arrest. 79 A.L.R. 1214.

Law Teaching and Problem Analysis

(*Continued from page five*)

found that they both had checked the same elements and possibilities. Most students and lawyers belong with Abbott in the phlegmatic group. For them to attempt dynamic thought raises dangerous inhibitions and fixations, excluding perception of and thought about all matters not in accord with their pre-determination, often so thoroughly that a subsequent conscious effort to see broadly will fail. "To fixate ideas is like damming the stream." [13] It is likely to leave important facts unobserved, and to leave unused some of the precept tools which are needed and are actually possessed in the subconscious. Very little of our knowledge lies close to the surface. "Mind has been compared to a great iceberg of which only a fraction appears above the level of the sea. In this case, the visible part of the mass corresponds to normal consciousness while the great invisible bulk is analogous to the subconscious. For others, the subconscious is a great mental reservoir into which are dumped all the experiences of an individual. They are preserved against the day when they may be drawn upon and used." [14] The bulk of mental tools possessed are thus buried and stored, not to be reached by guesswork or swift glances. Starting with a pre-conception seals up much of this material, raising only that portion which is favorable to the pre-conception.

The next problem is the draining or unearthing process, the delving into the subconscious for known or know-where material. It need not consist of a haphazard clutching and wild laying about. "Good reasoning demands more than a mere quantity of ideas. They must arise in an orderly manner, pertinent to the matter in hand, and must be clear." [15] The general attitude of psychologists [16] is that the

[13] G. F. Stout, "Analytic Psychology."

[14] C. R. Griffith, "Introduction to Psychology" (1926), at p. 343.

[15] H. D. Kitson, "How to Use Your Mind" (1916), at p. 131. See also Pillsbury, "Fundamentals of Psychology" (1922), pp. 372–373.

[16] Kitson, *id. op. loc. cit.* "In trying to recall a group of meaningless visual forms, and to draw them from memory, the observer does not start with a ready-made image. As he begins to draw, the recognitive feeling at once appears, rejecting here and accepting there"—E. B. Titchener, "Psychology" (1910), at p. 414.

safe method is a system of thought stimuli or associations, sharpening both perception of facts and memory. A memorized word or phrase is checked. Immediately a related group of precepts jumps into the conscious mind. Each member of this group in turn raises subsidiary cases, reasons, and exceptions. Then another general stimulus is prodded against the mind, with similar results. When the list of prepared stimuli, easily carried in memory, is exhausted, the facts and appropriate precepts are also exhausted.

Let us suppose a fact problem of contract. A set of stimuli to be checked through might be as follows:

1. What is the promise in legal issue and who made it?
2. Was it made in the course of a mutual assent?
3. Was it paid for with good consideration?
4. Has it been broken, and to what extent?
5. Are there conditions to the apparent liability for breach, and have they been performed?
6. Who are the proper parties plaintiff and defendant? Herein of beneficiaries, assignees, corporations, etc.
7. Is the apparent liability limited by:
   Statute of Frauds?
   Impossibility?
   Illegality?
   Rescission or release?
   Arbitration and award?
   Etc.

This list is of course a mere incomplete skeleton. It may be amplified, and developed by subdivisions, up to the reasonable memorizable limits of the particular individual. Collateral to it, as the source from which it is boiled down, there should be a rather full and detailed outline.

The student or lawyer may see in his fact problem an obvious issue of consideration. This occupies his conscious mind, so that ideas and perceptions relating to a more recondite matter such as conditions may be dulled and buried. But if he uses a set of stimuli, when he comes to the item of conditions his perceptions are sharpened and his memory is opened, bringing subsidiary stimuli which dig deeper if the facts so require. Three valuable results flow from this process. First, nothing important to the student-lawyer prediction on the facts is wholly overlooked, and no needed mental tools, however meager their supply, are left unused and idle in the subconscious. All the eggs are not in one basket, and something is on hand for any eventuality which may arise. Second, each element of the problem has been treated with an efficient concentration and lack of confusion. There is a limit to the amount which the conscious mind can hold at one time, and yet over-crowding it with separate issues is a common failing. When each issue is calmly left to await its turn, it has a better chance of thorough handling. Third, particularly applicable to students, inferiority complexes and the mental paralysis caused by fear are minimized. Many a student has so little idea of how he is to go about unraveling examination questions that he becomes nervous and mentally unbuttoned by the very sight of their confusion, cheating himself out of whatever knowledge he may possess. The self-confidence brought to him by the pos-

session of a mechanical set of stimuli is invaluable.

Of course the lawyer, who is not confined to a single "course," may have to reach for more than one set of stimuli in the process of his analysis. For instance, in checking a contract problem the item of proper parties may raise a problem of corporate existence and powers, and the status of the defendant may be that of a surety. Also, in some courses several sets of stimuli instead of one may be necessary. Whatever their number or their content, when a law student goes out into practice he should carry with him as complete a series of sets, alphabetically arranged on cards or in folders, as the curriculum can provide.

The need for systems of thought such as we have been discussing is not filled by the tables of contents in casebooks; many of them would look very different if they were drawn with our present idea in view. Of course many law teachers have thought out this sort of thing, and give complicated examinations designed to test skill in its use, but it is common to refrain from teaching the scheme on the ground that it ought to be worked out by each student for himself. Without doubt students must be required to think and compare and draw conclusions, broadly as well as in connection with narrow rules or groups of cases. But after all they are only students, in a strange field and with very limited time, and leaving them to their own resources may be overdone. They have a reasonable belief that they will be taught the things which a lawyer ought to know. In many instances when a student works out for himself a system of thought and analysis, he does not reach this point until his second year, leaving much of his valuable first year material deficient as to methods of use. In many other instances students struggle through graduation without ever having worked out or realized the possibility of thorough and orderly systems of analysis, to the detriment of their effectiveness in bar examinations and in practice. The development of such systems lies naturally within the province of the law school, where legal precepts can be divided into courses and then carefully subdivided. They are very difficult to work out in the confusion of practice, so the student must go out with them already in hand.

One piece of evidence which stimulated this article is the frequently large variety of grades which different teachers in a school will give to the same student in the same year. This

spread, or correlation of difference, was proven in copious charts and sets of statistics by Professor Wood of Columbia University, based on the records of his local law school.[17] He proved that these variations were greater on essay-type examinations than on true-false examinations, concluding that the latter type was superior. There is room for question as to Professor Wood's conclusion; that is apart from our present thesis. But it does seem that his statistics prove very definitely that at Columbia, as elsewhere, some law teachers have been less effective than others in teaching capable students how to *use* the precepts developed in a given course, when faced with an examination problem which approximates the lawyer's job.[18]

Consider the case of W, an earnest student in a Mid-Western law school. In two years of examinations he had been able to present only enough of his knowledge to get average grades of "C." Then he took a summer course in trusts from one of his regular instructors, doing his study and memory work in his usual way. Two days before the examination, one who was not the teacher explained to W the use of a system of thought stimuli. W prepared his material accordingly, applied the plan during the examination, and made such use of his stored knowledge, without omissions, that he received a grade of high "B." W remarked that during the examination his usual feeling of confusion was wholly lacking.

Consider the case of M, a student at another law school. In contracts his grade was "Condition," although he had worked hard and felt that he knew the course. He consulted with an older student who had attained some success in tutoring, and was given just fifty minutes of explanations about the use of a set of thought stimuli in problem analysis. When M took the make-up examination he used the scheme and received a grade of 96% on the paper, an unheard-of mark in a school where 80% was an "A."

It is quite easy to talk about "bums" and "the weak student,"—but how many of them are like W and M, only in need of a little clearer instruction? The assumption that all good raw material among students will work out effective methods of thought is false. It is perfectly natural for them to get so involved in precepts and reasons and arguments that they cannot see the woods for the trees. W and M have plenty of kindred, turned loose to practice with knowledge which they do not know how to use. We may indulge in the conceit that the geniuses will make law teachers, but what of the residue to be graduated into practice? They may be stirred up by the Socratic method, sharpened by comparative cases and the taking of differences, given time to work out some outlines, but at reasonable periods and at the end they must be *told*. Our purpose is to teach, not to mystify. There need be no fear of telling too much, for tricks and methods of thought will not give a free ride to the lazy or incapable student who has nothing to analyze.

[17] These may be found in the references made in note 2 *supra*.

[18] Northeastern University Law School has just charted a similar spread of grades, full of interesting peculiarities to which serious attention is being paid.

THE OPINION OF THE ABSTRACT EXAMINER

By C. EUGENE SMITH
of the Columbus (Ohio) Bar

This delving into musty lore,
'Midst legal cobwebs I deplore.
And yet am bound to snoop around,
Where buried errors may be found,
And as the antiquarian rakes,
So I must search for old mistakes,
And though my own would keep from sight,
Bring those of wiser men to light.
Like deeds not executed right,
Or misdescribing land or lot,
Or wife or husband who forgot
To sign or state was married not,
Or notary who omitted to
Affix his seal when he got through,
Or have a witness, witness too,
Or will some fine old banker drew,
But failed to tell how to construe,
Or mortgage that has not been seen,
Or taxes, or a judgment lien,
Or mortgage paid, but not released,
And held by assignee now deceased,
Or corporation deed not sealed,
Or law amended or repealed
Or by decision nullified,
Or case on which we had relied
Just overruled or modified,
So as to raise some questions new,
Of jurisdiction or venue,
Or of the plaintiff's right to sue,
Or case we chanced to overlook
Back yonder in old shelf-worn book,
And though John Doe had acted for
And thought he was executor
Of the estate of Richard Roe
Cum testamento annexo,
Was ab initio de son tort,
As held by court of last resort,
For no petition for probate
Was ever filed in the estate,
And though he made a full divide,
And all the heirs were satisfied,
And all the creditors have died,
And fifty years have passed beside,
And though the statute has begun
For the third time its course to run,
The court may yet make dough of Doe,
And all the proceedings had below,
Will from its decision overthrow,
Though I'm inclined to think the will
Will be the will of Richard still.

"It is a great thing to be a lawyer, especially in days when material possessions dwindle and interior resources rise in value. I doubt if any body of men have opportunities for service greater than ours. I am certain that no other group has so many interesting things to think about. This is equivalent to saying that lawyers are the happiest people in the community for in my estimation happiness consists in thinking interesting thoughts." —Senator Geo. Wharton Pepper, N. Y. Bar Ass'n. Address.

Mingle a little folly with your wisdom.—Horace.

Career Man.—First Prisoner—"What are you in for?"

Second Prisoner—"Want to be a warden, so I thought I'd start from the bottom."—*San Quentin Bulletin.*

In Extremis.—A lady motorist, whose car had swerved across a suburban street and crashed through a plate glass window was being questioned by the local constable after the accident.

"Surely on such a wide street as this," said the interrogator, "you could have done something to prevent this accident?"

"I did," the delinquent assured him quite earnestly. "I did all any woman could, I screamed as loudly as possible."

Ready for Lunch.—"My word, Dick, you've got the latest thing in typists."

"She is certainly that. She never gets here till eleven."—*Humorist* (*London*).

Jazzing Dame Justice.—Neighbor—"Why is your car painted blue on one side and red on the other?"

Speedy—"Oh, it's a fine idea. You should just hear the witnesses contradicting one another!"—*Everybody's Weekly* (*London*).

Lawyer's Wife (telephoning)—"Is my husband at the club?"

Porter: "No, ma'am."

Lawyer's Wife: "But I haven't told you who I am."

Porter: "Ah knows dat, lady, but they ain't nobody's husband heah nevah."—*The Building Owner and Manager.*

He Said a Potful.—"Why did you throw the pot of geraniums at the plaintiff?"

"Because of an advertisement, your honor."

"What advertisement?"

"'Say it with flowers.'"—*Der Lustige Sachse.*

Like Finding Money.—"Thankful! What have I to be thankful for? I can't pay my bills."

"Then, man alive, be thankful you aren't one of the creditors."—*Hudson Star.*

Post-Mortem Experts.—"You say that you are the sole support of a widowed mother, your father having recently been killed in an explosion. How did the explosion happen?"

"Mother says it was too much yeast, but Uncle Jim thinks it was too little sugar."—*Wall Street Journal.*

Partis Criminis.—"And what's your connection with this divorce case?"

"Youh honah, Ah's the grounds."—*Judge.*

Long Tells Senators What Is Intoxicating.—Huey Long gave the Senate some legal advice today on how to determine what constitutes intoxicating liquor. The Louisiana Senator said he had made an investigation in connection with the Senate's difficulty in determining what is intoxicating liquor and had settled the question when a human being is intoxicated. He quoted from Mordecai's law lectures from "The North Carolina Law Journal" the following:

"Not drunk is he who from the floor can rise again and drink once more.

"But drunk is he who prostrate lies and cannot either drink or rise."—*News Dispatch.*

Merely a Layman's Opinion.—At a recent meeting of the Orange Lions Club the following repartee was heard:

"You'll find that these lawyers usually hang together."

"Yes, unless one of them gets a stay of execution."—*Journal Cleveland Bar Ass'n.*

Excuse It, Please.—Timid householder (resourcefully, after discovering two burglars at work)—"D-d-don't take any n-notice of me—I'm only walking in my s-s-sleep."—*Boston Transcript.*

A Moratorium.—In examining an abstract of title we found a deed in which a vendor's lien was retained to secure a "note of $2,000.00 principal, payable in monthly installments of $20.00 each, the first installment due on or before April 1st, 1919, and a like installment on or before each *successful* month thereafter."

In view of the "repression" we are wondering just how long it will be before all the installments on this note will mature.—*Journal Cleveland Bar Ass'n.*

Common Lot.—"I want to know if I have grounds for a divorce?"

"Are you married?"

"Yes."

"Of course you have."—*Everybody's Weekly* (*London*).

He Knew.—A kid in school had become confused with his studies. So he sought the old man one night after dinner and asked him:

"Dad, what is bankruptcy?"

The old man had quite a long business career and the question consequently was an easy one. He replied with no show of hesitancy:

"Bankruptcy, my boy, is when a man puts his money in his trousers pocket and lets his creditors take his coat."

In the Olden Days.—The case of Ohio Wesleyan Female College v. Love is reported in 16 O. S. 20. Needless to say, the college was successful in its contest with Love.—*Journal Cleveland Bar Ass'n.*

Pst! Waiter! — Schoolboy's essay: "The defendant's lawyer made a motion for a change of menu."—*Boston Transcript.*

Et te.—She—The world is full of rascals. This morning the milkman gave me a counterfeit half-dollar.

He—Where is it, my dear?

She—Oh, I've already got rid of it—luckily the butcher took it.

New Alibi.—"What do you mean by coming home at this hour?"

"I didn't mean to come home at this hour, but the darn place was raided!"—*Judge.*

Might Freshen Him Up. — Movie Queen Flo.—"Why do you look so downhearted, dearie?"

Movie Queen Jo.—"My lawyer just advised me that owing to the general depression I had better use my old husband another season."—*Laughs.*

When the Dove Coos.—Magistrate (to woman involved in matrimonial dispute)—"Did you and your husband quarrel on Friday night?"

Wife—"And the next day pay day! Certainly not!"—*Wall Street Journal.*

There's a Needle in It.—"A Los Angeles woman gets a divorce because her husband called her 'a load of hay.'"

"That's too ticklish a thing to call any one."—*B'nai B'rith Messenger.*

Silver Lining.—Benefits of the depression—Judge I. L. Harris of San Francisco reports that the number of divorces has fallen off markedly.

Col. R. I. Randolph, head of "The Secret Six," reports that he can now get any one in Chicago bumped off "for two or three hundred dollars."

Judge Calvin Stewart of Kenosha, Wisconsin, announces he will reduce fines for intoxication from three dollars and costs to one dollar and costs—in order to line up with the nation-wide economy drive.—*Life.*

Proofs of Servitude.—Station Sergeant—"Are you married?"

Prisoner—"No, sir."

Officer—"He's a liar, Sargeant. When we searched him we found in his pockets a clipt recipe for curing croup, a sample of silk, and two unposted letters in a woman's handwriting a week old."—*Bennington Banner.*

Captain on the Bridge. — Lawyer — "Was your car under complete control at the time?"

Defendant.—"Yes, my wife was sitting in the rear seat."—*Answers.*

Probably a Politician.—Sebewaing — Oscar Kurzer caught a lawyer weighing eight pounds with a mud turtle in the stomach which was so large it could not be pushed back through the mouth.—*Detroit Free Press.*

In These Times.—Mr. H. H. Sears, legal editor of the American Banker sends us this clipping.—"When the plaintiff admitted that the cost of the repairs to his car which collided with one driven by the defendant, would amount to about $15, the Judge dismissed the case stating that the amount was too small to be considered in court."

Puzzled.—Attorney M. J. Embs of Iron River, Mich. contributes this.—A man who evidently had never owned any real estate, came to my (M. J. Emb's) office to have a deed drawn up, naming himself as grantee. In getting the necessary data I asked him how the property was described. He stared at me in bewilderment. "Well," he said, "this feller said that it was described by LEAPS and BOUNDS, but I don't know what he means by that." He apparently was under the impression that a kangaroo had been used in surveying the land.

Saga of the Past.—We are indebted to Miss Bernice Consulich of the Arizona Daily Star of Tucson, Arizona, for the following authentic entries in the journal of George Hand, janitor in the Pima County, Arizona, court house in 1883.

"Friday, June 8, 1883: Up 5:20. Jury still hang. A friend brot them a bottle of whisky. After I sampled it the jury drank it and they immediately agreed on a verdict of guilty as per indictment. Court

called, the jury after reading verdict, were discharged till tomorrow morning."

"Thursday, June 21, 1883: Warm. Martinez sentenced to 10 years, Yuma. Keener trial occupied the whole day. Jury retired at noon, remained until 7:30. They stood, first ballot 8 for conviction and 4 for acquittal. It being late and no show for supper, the 8 came over to the 4 and the court ordered the defendant released from custody. Retired 9:45, very hot."

"Friday, July 6, 1883.—Fine morning. Sent 'Spirit' to Bradley. Board met. Court in session. Mrs. Smith took Laudanum and but for Dr. Watson and his stomach instrument, she would have crossed the dark river. Retired 9:25."

Old Man Blundered.—Rastus's lawyer was informing him on the legal status of his matrimonial relationship and his chances for a divorce:

"Mistuh Johnson, I has discovered I can get you yo' divorce on the grounds that yo' marriage ain't legal on account of her father he had no license to carry a gun."—*Judge.*

Time for a Squawk.—"You're a fine lawyer, you are," said the prisoner, contemptuously. "Why, all through the case you kept saying: 'Your honor, I object.'"

"I know I did," returned the lawyer. "You had the benefit of my best legal efforts."

"Then when the Judge sentenced me to ten years, why didn't you object to that?"—*Tatler.*

Passed.—Foreman (on excavation job) "Do you think you are fit for really hard labor?"

Applicant—"Well, some of the best judges in the country have thought so."—*New Zealand Railways Magazine.*

Who Knows?—Paul A. Pfister, Attorney of Mt. Vernon, Indiana, sends us the following as an actual occurrence in the local court:

"A certain member of the local bar dictated an order-book entry to his stenographer. Upon filing same with the Court for approval His Honor was astounded to read the following sentence contained in said entry: 'Upon motion of the plaintiff this cause is now submitted to the Court for trial without the intervention of justice, etc.'"

Official Returns.—George W. Stone, Esq., Vergennes, Vt., sends us the following.—The officer's return on a writ lately handed me (George W. Stone) reads as follows:

"I.....a deputy sheriff, made service on the defendant by delivering to..... the only tenant on said farm, by delivering to him a true and attested copy and by delivering to George W. Stone a like, true and attested copy, to said George W. Stone repudiated to be the agent or attorney of said defendant in some capacity, the extent thereof which is to this officer unknown."

Gems from Bar Examination.—Contributed by D. Niel Ferguson, Attorney,

Ogala, Fla.—In a recent Bar Examination in Florida, the following answers were tendered:

Equity Jurisprudence is the prudence with which a court of equity handles the case.

Chancery jurisdiction is the place where the case is tried.

The cy prés *doctoring* is the *doctoring* relating to trusts and specifically stating the conditions of forming trusts, etc.

Also according to one applicant, Equity must be Heaven, because he named as one of the subjects for the exercise of equitable jurisdiction "the transformation of contracts because of patent errors."

Condonation.—Attorney Abram Simmons of Bluffton, Indiana, writes:—"A certain cause was filed in the Wells Circuit Court recently wherein a decree of divorce was demanded by the plaintiff upon the ground of cruel and inhuman treatment. The cause was stated as follows:

"The plaintiff alleges that the defendant was guilty of cruel and inhuman treatment of her in that he struck and beat her while she was milking a cow with a club."

Helping Us Out.—Miss Lina Sauer, Secretary to Attorney George W. Crouch, writes.—On page 32 of *"Case and Comment"* second column, Volume 38, Summer 1932, Number 2, you ask that some of your readers suggest as to how to describe "20 male cows"—well, knowing that a cow is as needful to humanity as a movie star, and as the husbands of movie stars are usually described as "so and so's husband," why not describe the male specie of the cow as the "cow's husband."

Upon Mr. Crouch's return to the office from a short illness he wrote to a firm of attorneys in San Francisco, apologizing for not writing them sooner, and saying that he was now back at work again, to which they replied, "we are certainly glad to hear that you are not back at work again."

Birds of a Feather.—A Congressman who was recently defeated for re-election after filing suit to contest the election is reported to have said according to a local paper: "I don't want to be thrown out of court by a skunk, he is a fraud, a trickster, a deceiver. I am not the only one."

Admission against Interest.—The law firm of Claster & Claster, New Kensington, Pa., sends us the following clipping from a local paper:

LEGAL

TO WHOM IT MAY CONCERN—I, Winnie T. Wise, will not be responsible for any debts that my wife, Ella Wise, contracts, unless O.K.'d by me. My patience has ceased to be a virtue. Winnie T. Wise.

Reputation Good, Character Bad.—Judge Harry L. Conn, of Cleveland, recently cross-examined a character witness in a jury trial in his home city of Van Wert. The person had testified that the reputation of a prosecuting witness was "extra" good for truth and veracity. Judge Conn inquired, "Which is the better? His reputation for truth or his reputation for veracity?"

The witness looked appealingly to counsel on the other side, toward the court, then in the direction of the jury, and, finally, at the gallery. Receiving no aid, he said, "His reputation is better for truth than it is for veracity."

The moral is that evidence of general reputation in most instances is good for about what it is worth—if, indeed, it is worth that much.—*Ohio Bar Ass'n Report.*

Believe It or Not.—Mary Corinne, aged nine, was out driving with the family. As they passed the former home of a distant cousin, the grandmother said to Mary Corinne's father, "Had you heard that Cousin Marie had died?" He answered, "Yes, but I never knew what caused her death. What was it?" His mother replied, "Confinement." Quick as a flash came from Mary Corinne this query: "Solitary?"—*Contributed.*

Convincing Evidence.—Attorney Joseph E. Merriam, Mount Kisco, N. Y., sends us the following indorsement on a summons he had mailed for service in another town. "Dear Mr. Merriman:—This is one man no one can serve as he is dead. I know because I drove the hearse in his funeral."

One Crying in the Wilderness.—"Our law prof talks to himself. Does yours?"

"Yes, but he doesn't realize it—he thinks we're listening."—*Juggler.*

Illustrated.—"When is a man drunk?" asks a board of fifteen London physicians. The question has reminded D. O. O. of an anecdote: A jovial, rotund German was sitting with his son at a table in a beer garden. "Fader," said the latter, "how can von tell ven von is drunk?"

"Vell, mine sohn," replied the father, "you see dose two men over dere? Ven dose two men look like four, den ve are drunk."

"But, fader," said the boy, "dere is only von man over dere."—*Selected.*

Guilty!—All odds were against this tourist:

Auto Tourist—"I clearly had the right of way when this man ran into me, and yet you say I was to blame."

Local Officer—"You certainly were."

Autoist—"Why?"

Local Officer—"Because his father is mayor, his brother is chief of police and I go with his sister."—*Selected.*

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CASE AND COMMENT invites its readers to submit original manuscripts on subjects of interest to the legal profession not exceeding twenty-five hundred words in length. All articles accepted will be paid for at the usual rates. Address George H. Chapman.

Government Regulation

"Regulation comes on apace or like a flooding tide. Those who kick against the pricks are opposing with weak and flimsy brooms. Even courts grow sensitive to the ground swells.

"It is said that Chief Justice White admitted that 'in my time we relaxed constitutional guarantees from fear of revolution,' and that Chief Justice Taft declared that 'at a conference I announced "I have been appointed to reverse a few decisions" and' with his famous chuckle, 'I looked right at old man Holmes when I said it.' What a pity were these illuminating incidents lost to history save in so far as the court's reports will verify them.

"The trend of the age is again 'liberal,' however much abused the term or like charity it may cover, and we are on our way whether or not we know where we are going or what we will do when we get there. But, so far as regulation is concerned, like it or not, wise or not, it is a fair prophecy that, in classic phrase of the day, 'folks, you haint seen nothin' yit.'" United States District Judge Bourquin in 52 F. (2d) 196.